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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/775,536

02/10/2004

James J. Rudnick

S63.2N-14438-US05

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490 7590 08/01/2011  
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EXAMINER

SCHILLINGER, ANN M

ART UNIT

PAPER NUMBER

3774

MAIL DATE

DELIVERY MODE

08/01/2011

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/775,536	<b>Applicant(s)</b> RUDNICK ET AL.	
	<b>Examiner</b> ANN SCHILLINGER	<b>Art Unit</b> 3774	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 April 2011.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 26-36 and 38-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 26-36 and 38 is/are rejected.
- 7) ☒ Claim(s) 39 and 40 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 26-36 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hillstead (US Pat. No. 5,019,085) in view of Kanazawa (JP 07024072). Hillstead discloses the following of the claimed invention: an elongate tubular stent (12) formed of a helically wound wire defining a plurality of wire waves wherein said wire waves are longitudinally nested within each other; the stent having an unexpanded state (col. 2, lines 27-44), the plurality of wire waves comprising a first wire wave and a second wire wave (Figs. 3-4), the first wire wave being longitudinally adjacent to the second wire wave; the stent having a length (Figs. 3-4); and a lumen (Figs. 3-4). The waves have varying amplitudes with the waves adjacent the ends of the stent having a smaller amplitude than those waves in-between (please see Figures 3-4). The stent may be constructed into various patterns from a single, continuous helically wound wire (Fig. 3). Regarding the limitations describing the waves being in direct contact with one another and the peak to peak distance between the waves, the Hillstead reference does not explicitly state that the windings of the stent will contact each other or have the claimed peak-to-peak distance. However, Hillstead discloses the stent being made of a flexible stainless steel wire which is capable of being compressed into various configurations which may include the windings being

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in contact with each other and the claimed peak-to-peak distance (col. 2, lines 27-44; col. 3, lines 24-30).

Hillstead does not teach applying a cover with a solid structure having pores and elasticity to the stent. Kanazawa teaches a stent with a solid, porous cover of tetrafluoroethylene resin as taught in the abstract for the purpose of providing the stent with improved biocompatibility and antithrombogenesis. It would have been obvious to one of ordinary skill in the art at the time the invention was made to place a cover on the stent of Hillstead in order to provide the stent with improved biocompatibility and antithrombogenesis.

Please note that the examiner is interpreting the terms “film” and “membrane” by their dictionary definitions. “Film” is defined as “a thin sheet of any material” (film. Dictionary.com. *Dictionary.com Unabridged (v 1.1)*. Random House, Inc. <http://dictionary.reference.com/browse/film> (accessed: May 07, 2008)). “Membrane” is defined as “a thin pliable sheet of material” (membrane. Dictionary.com. *WordNet® 3.0*. Princeton University. <http://dictionary.reference.com/browse/membrane> (accessed: May 07, 2008)). The stent covering described in the Kanazawa reference meets the limitations of these terms, as set forth by their respective definitions.

### ***Claim Objections***

Claims 39 and 40 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

Applicant's arguments filed 4/19/2011 have been fully considered but they are not persuasive. The Applicant contends that there is no motivation as to why the Hillstead reference may be configured such that the windings are in contact with each other. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed, such as the windings being in direct contact with each other, does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. The Hillstead reference, like the currently pending invention, is made of a flexible wire material that allows for the waves of the stent to be contracted/expanded and is capable of contacting adjacent windings.. Since the claimed structural limitations have been met, there is no need for the Hillstead reference to have a motivation as to why it would be employed in the same manner as the claimed device.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ann Schillinger whose telephone number is (571)272-6652. The examiner can normally be reached on Monday-Friday (9am-5:30pm).

If attempts to reach the examiner by telephone are unsuccessful, please contact the examiner's supervisor, David Isabella, at 571-272-4749. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

If there are any inquiries that are not being addressed by first contacting the Examiner or the Supervisor, you may send an email inquiry to TC3700\_Workgroup\_D\_Inquiries@uspto.gov.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/A. S./

Examiner, Art Unit 3774

/DAVID ISABELLA/

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Supervisory Patent Examiner, Art Unit 3774